

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 42 of 1995.

Decided on : October 12, 2006.

Krishan Kumar

.....Appellant.

VERSUS

State of Himachal Pradesh

.....Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : Mr. Bhupender Gupta, Sr. Advocate
Mr. Neeraj Gupta, Advocate.

For the Respondent : Mr. Ashok Chaudhary, Additional
Advocate General.

Surjit Singh, Judge (Oral)

Appellant, Krishan Kumar, hereinafter called plaintiff, filed a suit for declaration that he was owner in possession of land measuring 18 Bighas 16 Biswas, bearing khasra No. 884/1, as per jamabandi for the year 1974-75, situate in Mauza Barasli, Paragna Mandalgarh, Tehsil Rohru, District Shimla (hereinafter called suit land) and also for permanent prohibitory injunction restraining the respondent- State (hereinafter called defendant), from causing any interference in his possession. It was alleged that the plaintiff was owner in possession of land, bearing khasra No. 1818/1329, situate in Mauza Arhal and that the suit land was adjacent to his aforesaid land

Whether the reporters of the local papers may be allowed to see the Judgment?

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situate in village Arhal. It was further stated that suit land had been in plaintiff's possession and prior to him, his forefathers' possession for a period of more than 70 years. He also claimed that his and his forefathers' possession was continuous, open, peaceful and uninterrupted and thus they had acquired title by prescription. It was alleged that on 17.9.1980, a notice was received by the plaintiff from the Sub Divisional Officer (Civil), Rohru, that the suit land had been encroached upon by him. The plaintiff alleged that the notice was bad, because he had acquired title to the property by prescription.

2. On being noticed, the State of H.P. (defendant) filed written statement, in which it was denied that the plaintiff had been in possession of the suit land for such length of time, as to prescribe for title. It was alleged that the suit was bad for non-service of notice, under Section 80 of the Code of Civil Procedure. Jurisdiction of the court was challenged. Valuation of the suit was also disputed. Plaintiff was alleged to be estopped from filing the suit. Trial Court, after framing the issues and recording the evidence, found that the plaintiff had not acquired title to the suit land by prescription and consequently dismissed the suit. Issues framed on various preliminary objections raised by the defendant- respondent were found against it (the defendant). Appeal was filed by the plaintiff in the court of District Judge, which stood dismissed, vide judgement, dated 8.11.1994. Finding of the trial court that the plaintiff had failed to establish the plea of adverse possession was upheld.

3. The present appeal was admitted on the following substantial questions of law:-

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1. When the plaintiff- appellant has been admittedly in settled possession of the land in suit, were the courts below justified in refusing the relief of injunction?
2. When the presumption to the revenue entries stood rebutted by the evidence of the parties, could the proceedings for ejectment initiated by the Revenue Officers be held to be within their jurisdiction? Was not it essential for the defendant to have shown the subsisting title to the property?
3. Whether to prove the adverse possession over the land on which House and Orchard are located, is it always necessary for the plaintiff- appellant to have proved the ages of the plants existing on the land for more than 30 years? Can the plea of adverse possession be negated merely on the ground that the apple plants standing on the land in question have not attained the age of 30 years?

4. I have heard the learned counsel for the appellant and gone through the record. The two courts below on the basis of the evidence, adduced by both the parties, have concluded that the plaintiff had not been in possession of the suit land for a period of 30 years on the date of the institution of the suit and, therefore, he had not become the owner by adverse possession and was therefore, not entitled to the relief of declaration. The trial court scrutinized the evidence minutely. It found on the basis of the testimony of the plaintiff himself, as also by the testimony of other witnesses that the age of the fruit plants raised by the plaintiff on the suit land was not

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more than 18 years and that this was a circumstance indicating that the possession of the plaintiff could not have been for more than 18 years. The trial court also took into account other evidence led by the parties and returned a definite finding that the plaintiff had not been in possession of the suit land for more than 30 years. The first appellate court has also considered the entire evidence led by the parties and come to the same finding as the trial court.

5. Learned counsel for the appellant could not point out any error in the appreciation of the evidence by the two courts below.

6. Admittedly in the revenue papers, the suit land is shown to be in the ownership of the State of Himachal Pradesh, i.e. the defendant. The oral evidence led by the plaintiff, as discussed threadbare by the two courts below in their judgements does not rebut the entry.

7. As a result of the above discussion, questions No. 2 and 3, as reproduced hereinabove, are answered against the appellant-plaintiff.

8. As regards question No.1, the learned counsel for the appellant submitted that admittedly the possession of the suit land was with the plaintiff and, therefore, he was entitled to the relief of injunction. It is not the case of the plaintiff that the defendant threatened to oust or dispossess him without following due process of law. As a matter of fact, it is the plaintiff's own plea that a notice had been issued, under Section 163 of the H.P. Land Revenue Act, for initiating proceedings for his ejection. If, that is so, it cannot be said that the defendant intended or threatened to dispossess the plaintiff

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from the suit land, without following due process of law. When there is no threat, even according to the plaintiff, to dispossess him without following due process of law, he is not entitled to the injunction that he be not dispossessed except by due process of law. Hence, this question is also answered against the appellant- plaintiff.

9. For the foregoing reasons, appeal is dismissed.

October 12, 2006.
(Hem)

(Surjit Singh)
Judge.